

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WEBB & CAREY, APC

Plaintiff and Respondent,

v.

JAMES W. KEENAN et al.,

Defendants and Appellants.

D060338

(Super. Ct. No. GIC817390)

APPEAL from orders of the Superior Court of San Diego County, Timothy B. Taylor, Judge. Affirmed.

This is another step in long-running litigation in which plaintiff and respondent Webb & Carey, APC (Webb), formerly the law firm for defendants and appellants James and Judy Keenan (together, the Keenans), seeks enforcement of million dollar judgments against the Keenans for attorney fees. Now before us are the appropriateness of the trial court's May 27 and 31, 2011 orders that required the Keenans's compliance with existing receivership orders, by disclosing their finances, and the court's award of certain fees and

costs to Webb, to the receiver, and to the attorney for the receiver. (Code Civ. Proc.,<sup>1</sup> §§ 564 et seq.; 128, subd. (a)(4).)

On appeal, the Keenans contend these orders for production of documents violated their rights to privacy as well as other statutory and attorney-client privileges, and were legally erroneous or excessive. The Keenans also challenge the fees awarded on several grounds. Pending appeal, the parties have brought numerous motions, notably Webb's request for dismissal and to supplement the record, all of which we have resolved in a separate order denying dismissal and granting augmentation in part.

To address the appellate issues, we first set forth essential background and discuss the effect of the motion filings and ruling pending appeal. We then address the merits of the Keenans's remaining appellate claims. As we will show, this record demonstrates that the trial court did not err in its interpretation of the applicable statutes and receivership orders and the evidence supports the enforcement, fees and costs orders. No prejudicial legal error or abuse of discretion has been demonstrated, and we affirm.

## I

### *BACKGROUND*

In our prior opinion filed on May 30, 2012 (*Webb & Carey v. Keenan* (D059063) (our prior opinion)), this court outlined the progress of this litigation in the trial court and in the appellate courts, and upheld a December 2010 order for appointment of a receiver based on related relief (charging order, assignment order, restraining order and turnover

---

<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless noted.

order), to assist in the collection efforts of renewed judgments in favor of Webb against the Keenans. (§ 708.620.)<sup>2</sup> Those 2005 judgments were entered after judicial confirmations of the 2001 arbitration awards, and included awards of attorney fees and costs. In discussing the history of the case, we said, "Any court that rules upon this matter at this stage must be well aware of the contentiousness of this litigation, and the complicated nature of its recent and also its relatively ancient procedural history." This trend continues.

Webb brought motions to compel compliance with the December 2010 receivership order, and for postjudgment costs, professional fees and attorney fees. (§ 699.070.) The motions were resolved in a formal order of May 27, 2011, signed at the hearing, and a May 31, 2011 minute order which was issued to clarify the May 27 formal order ("the May 2011 orders").

The effects of these extensive May 2011 orders, as challenged here, are (a) to require the Keenans to respond to questions under oath concerning their assets, liabilities, transfers, and business affairs, and (b) to provide the receiver with copies of requested documents within their custody and control. The order specifically requires the Keenans to provide the receiver, counsel, and a computer consultant with complete access to their computers and electronic devices and to allow the receiver's agent to copy financial data

---

<sup>2</sup> Section 708.620 provides for appointment of a receiver to enforce a judgment "where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment."

for investigative purposes, including their tax work papers and backup, but excluding tax returns.

In the May 31 clarifying order for compliance with the receivership obligations, the court made a finding: "There is abundant evidence of non-cooperation by [the Keenans, and they] are ordered forthwith to provide, in writing and under oath, a complete and detailed accounting of the \$1.1 million referenced in the moving papers [as having been disbursed by the Keenans to nonpriority claimants]," and to comply with the previous financial disclosure order.

Even though the Keenans's notice of appeal was already on file by July 26, 2011, their designated record includes the reporter's transcript of a hearing dated August 5, 2011, following up on these enforcement efforts and clarifying some of the privilege problems with production of documents. At that follow-up hearing on August 5, the court referred to its previous instructions to the Keenans to make a privilege log for assertion of any attorney-client privilege, as well as facilitating the removal of family photographs, etc. from the computer material to be disclosed.

With regard to attorney fees and costs awards, Webb sought \$337,317.72 against the Keenans, claiming that amount was reasonably and necessarily incurred because of the Keenans's noncompliance with court orders. Webb supplied the receiver's monthly reports about the monies available, the costs and fees incurred, and lodged billing documents.

The May 31 order granted costs to Webb of \$10,768.93, and counsel for Webb was granted an interim attorney fees award of \$100,000 (subject to later adjustment). The receiver was granted fees of \$43,687.50. Counsel for the receiver was granted attorney fees of \$68,534, as well as costs in the amount of \$1,205.79.

## II

### *MOTIONS PENDING APPEAL; RULING*

During record preparation, Webb filed its motion to dismiss, based on the disentitlement doctrine. (*MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277; *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1683.) Webb further claimed that as appellants, the Keenans have accepted the benefits of the orders and thus waived their rights to appeal (by stipulating with the receiver to release some funds; see *Gudelj v. Gudelj* (1953) 41 Cal.2d 202, 214 [voluntary acceptance of benefits of a judgment bars an appeal from it]). We received additional requests from each party to augment the record and/or for judicial notice. Oppositions and responses were filed, and the motions were deferred for decision to this merits panel.

On the merits of the appellate motions, our separately issued ruling states as follows: (1) Webb's motion to dismiss, filed on March 21, 2012, based on the disentitlement doctrine, is denied. (2) Webb's related motion to augment (by filing of a supplemental respondent's appendix), also filed on March 21, 2012, is granted as to Exhibit 1 only, a notice of entry of the May 27, 2011 order, served upon counsel for the Keenans and others. Two requests for judicial notice were denied (Webb's, in support of

his dismissal motion, filed May 11, 2012, and the Keenans' request, filed on May 29, 2012). (Evid. Code, § 452, subd. (d).)

### III

#### ANALYSIS

##### A. Authority for Judgment Debtor Proceedings in a Receivership

Appointment of a receiver is an extraordinary measure, and "[t]he appointment of a receiver rests within the discretion of the trial court." (*Gold v. Gold* (2003) 114 Cal.App.4th 791, 807-808 (*Gold*).) The receiver is a court official, subject to judicial supervision in preserving property and holding assets for the court. (§ 564, subd. (b)(9); see 6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 419, pp. 357-359 (Witkin); Cal. Rules of Court, rule 3.1179 (a).) Under section 568 et seq., the receiver has the power to do such acts respecting receivership property as the court may authorize. (Witkin, *supra*, § 451, p. 381.) The receiver has the power to take possession of property and to manage and control it. (§ 568.)

Enforcement of judgment procedures may be pursued by the receiver, such as selling property under sections 568.5 and 701.510 et seq. (See Witkin, *supra*, § 455, p. 386.) Where the parties cannot cooperate on enforcement of judgment matters, due to their actions of "acrimony and divisiveness," such circumstances may be found by the court to be sufficient to justify the appointment of a receiver to effect the terms of the judgment. In light of the court's "considerable discretion" to appoint a receiver, its implied findings may be deemed sufficient on the necessity and choice of procedures for

implementation of a judgment, such as where a judgment debtor's assets must be liquidated. (*Gold, supra*, 114 Cal.App.4th 791, 809.)

The trial court in this case was interpreting several interrelated statutory bodies in supervising the receiver's efforts to collect the assets of the judgment debtors, the Keenans. In its moving papers in the trial court, Webb relied on section 128, subdivision (a)(4), providing that the court has the authority to compel obedience to its judgments and orders issued in a pending action. On appeal, Webb also refers to the trial court's underlying receivership appointment under sections 564 and 708.620, as further supporting the procedures used in these enforcement of judgment efforts.

#### B. Enforcement Issues: Privilege and Jurisdiction

We now examine these orders in light of the trial court's resolution of the questions of law and fact then before it. (See *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230 [court's factual findings supporting exercise of discretion must be supported by evidence].) The Keenans claim on appeal that section 708.110 provides "the prescribed and exclusive procedure for examination of a judgment debtor," and they argue that the trial court in this case, in utilizing the receivership method, "has acted contrary to the authority conferred by statute, thus, it has exceeded its jurisdiction." (See *Mitchell v. Superior Court* (1972) 28 Cal.App.3d 759, 764; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 290; *Rodman v. Superior Court* (1939) 13 Cal.2d 262, 269-271.) The Keenans believe that the judgment debtor examination procedures used here failed to comply with the requirements of section 708.010 et seq., that allow the judgment

creditor to propound written interrogatories to the judgment debtor or otherwise request information to aid in enforcement of the money judgment.

However, those statutory provisions are not exclusive, and here, the necessary express and implied findings were made under sections 564, 699.070, subdivision (a) and 708.620 for the court to appoint a receiver to implement the judgment, with the assistance of counsel. Section 699.070, subdivision (a) provides, "The court may appoint a receiver . . . to preserve the value of property levied upon, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. . . . ." Section 699.070, subdivision (d) empowers the court to order compensation for the receiver, payable by the judgment creditor or out of the proceeds of any sale of the property.

The Keenans inexplicably claim that this receiver was not a qualified attorney-referee who could conduct judgment debtor examinations, according to the requirements of section 708.110, subdivision (a): "The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment." (§ 638 et seq.) Such judgment debtor examination proceedings may include subpoenaing witnesses to attend the examination, etc. (§ 708.140, subd. (a); under § 708.140, subd. (b), a referee acting pursuant to this article must be a qualified attorney.)



Here, however, the receiver was not acting in the capacity of a referee under section 638, nor was there any requirement that such a procedure be followed. Instead, as described in our prior opinion, the trial court had appropriately taken action under section 708.620 to appoint a receiver to enforce the judgment: Since other methods had failed, it "was necessary instead to utilize the methods of receivership under sections 564 and 708.620, as 'reasonable' remedies toward enforcement of judgment." Section 708.620 was shown to apply and to allow the appointment of a receiver to obtain a fair and orderly satisfaction of the judgment.

Regarding compelled production of financial documents in this context, section 708.030, subdivision (c) provides that inspection demands pursuant to this section may be enforced to the extent practicable, in the same manner as inspection demands in a civil action. This appointed receiver had the assistance of counsel, and had the duty to inquire into and collect the assets of the judgment debtor, in aid of enforcement of judgment, under sections 564, subdivision (b)(3) and 699.070, subdivision (a). (See 8 Witkin, Cal. Procedure, *supra*, Enforcement of Judgment, § 310, pp. 336-338.) Both the trial court and the receiver followed statutory procedures and there was no excess of jurisdiction in these regards.

In another challenge to the appropriateness of the trial court's enforcement orders, the Keenans claim the orders failed adequately to protect their privacy and attorney-client privileged materials, because such privileged material was intermixed with otherwise discoverable financial records. They have no valid basis for this claim, since the court

expressly clarified the order more than once, as shown in the reporter's transcripts provided, to supply adequate procedures to protect privileged materials, including their tax returns. The court repeatedly offered the Keenans the opportunity to supply a privilege log or otherwise to distinguish between discoverable material and privileged material. They showed no inclination to do so, and have only provided bald claims that no such opportunities were provided or sufficient, or that notice was insufficient, or that there was no legitimate opportunity to meet and confer.

Without a more specific showing, we cannot find that the Keenans's rights were materially interfered with in such respects, or that they suffered undue prejudice from the procedures followed. As stated in our prior opinion respecting similar meritless procedural claims they previously made, "Claims of this procedural nature should be reviewed for prejudice: '[T]he presumption in the California Constitution is that the "improper admission or rejection of evidence . . . or . . . any error as to any matter of procedure," is subject to harmless error analysis and must have resulted in a "miscarriage of justice" in order for the judgment to be set aside. (Cal. Const., art. VI, § 13.) Code of Civil Procedure section 475 contains similar language: "The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of the court, does not affect the substantial rights of the parties." ' (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56-57.) [¶] In these respects, the Keenans have not shown any voidness of the orders resulted, nor that any harmful error occurred." The same is true here.

### C. Fees and Costs Issues

Pursuant to section 685.040, Webb as a judgment creditor was entitled to the "reasonable and necessary costs of enforcing a judgment," and since the underlying judgments and receivership order included provisions for costs and attorney fees, the receiver fees and the attorney fees incurred in enforcing the judgment were collectible costs. (§§ 699.070; 1033.5, subd. (a)(10)(A).) Webb as the judgment creditor followed the procedures under section 685.080, subdivision (a), for claiming fees and costs, through a noticed motion. In ruling on such a motion, the court is required under section 685.080, subdivision (c), to "make an order allowing or disallowing the costs to the extent justified under the circumstances of the case," involving an exercise of discretion.

Here, Webb sought an award of \$337,317.72 against the Keenans, in their capacities as judgment debtors, to be added as "costs of \$337,317.72 to the judgment." Webb supplied reports of the receiver and lodged documents concerning his own attorney fees, to give a factual basis for the amounts requested. (Cal. Rules of Court, rule 3.1182.) The receiver was holding cash for distribution, as it was being recovered, and the receivership assets were properly liable for the professional fees and costs previously authorized by order and statute. The court awarded costs and fees to Webb of \$110,768.93. The receiver was granted fees of \$43,687.50, while counsel for the receiver was granted attorney fees of \$68,534, as well as costs in the amount of \$1,205.79.

The Keenans attack the order awarding the receiver and his attorneys their professional fees, by claiming the court could not award such fees to Webb as the

judgment creditor, on behalf of the receiver and his counsel. They also suggest they might improperly be held liable to pay these costs personally and costs should not be added to the judgment. However, this record clearly deals with the receivership assets to be applied toward all of the outstanding judgment amounts. (§ 699.070; Cal. Rules of Court, rules 3.1183, 3.1184.) At most, Webb's party status was being used as a conduit to pay those professional fees, which was not improper for enforcement of judgment purposes in this procedural context. The court did not order that the entire amount requested be paid, which shows an exercise of its discretion, and its order referred to its concerns about avoiding duplicate legal work. There was no abuse of discretion or error in this respect. (§ 685.080, subd. (c).)

The Keenans next argue that under section 1033.5, subdivision (b), certain costs in the amount of \$8,078.93 were not authorized for Webb to recover as a prevailing party in litigation. They claim some costs were unreasonable or unnecessary, such as postage, court reporter fees, investigator fees, and messenger fees. As far as can be determined from the record before us, these were reasonable cost items, and there is no indication the Keenans made any motions to tax or other challenges in the trial court, after receiving the reports of the receiver, other than in their opposing points and authorities in the motion proceedings. (Cal. Rules of Court, rule 3.1183(b) [objections to accounting of receiver must be made within 10 days of notice of reports].) We have been given no legitimate basis to delete certain items from the costs bills, as the Keenans now request.

DISPOSITION

The orders are affirmed. Respondent to recover costs on appeal.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.